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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Extended Area Service (EAS)
for Uintah and Duchesne Counties

**PETITION FOR AGENCY REVIEW
AND RECONSIDERATION**

Docket No. 02-053-02

Pursuant to Utah Code Ann. § 63-46b-12, Agency Review, and/or § 63-46b-12, Agency review Reconsideration, the Committee of Consumer Services (Committee) petitions the Public Service Commission of Utah (Commission) to review and reconsider its May 13, 2002, Order issued in these proceedings granting the Application of Petitioners Uintah Basin Telecommunications Association, Inc. (UBTA) and UBET Telecom, Inc. (UBET) (collectively the Petitioners) for Extended Area Service (EAS).

INTRODUCTION

1. On May 28, 2002, the Petitioners filed a request for agency action with the Commission for approval of EAS, which would provide local calling within all of Uintah and Duchesne Counties and the Strawberry Valley portion of Wasatch County (Uintah Basin).

2. On May 13, 2003, the Commission issued its Order in these proceedings, approving the EAS upon the condition that it becomes available, and the rates effective, at the time of any rate changes that arise from the conclusion to the Petitioners' current rate reviews. The Commission's Order concluded that a further survey recommended by the Division of Public Utilities ("Division") was not needed.

3. The Committee petitions the Commission to review and reconsider its Order in light of the additional data, information, analysis and recommendations provided by the Committee in this Petition.

BACKGROUND

4. UBTA is a telephone cooperative operating exchanges in LaPoint and Randlet, Uintah County, and in Altamont, Fruitland, Flattop, Neola, and Tabiona, Duchesne County. UBET is not a telephone cooperative, but rather a wholly-owned subsidiary of UBTA that operates exchanges in Duchesne and Roosevelt, Duchesne County, and in Vernal, Uintah County. It is not disputed that UBET rates and operations are subject to Commission regulation and oversight responsibilities. The Committee will represent later in this Petition that UBTA's proposed rates for EAS should be subject to similar regulation and oversight.

5. Only after several revisions to the Petitioners' cost study and several technical meetings between the Petitioners, the DPU, and Committee representatives, did the DPU have what it felt was sufficient data and information to be able to complete its investigation and analysis of the Application and make substantive recommendations regarding the Application. The DPU filed its investigative Memorandum and recommendations with the Commission on April 11, 2003. The Petitioners filed a

Response on April 23, 2003, which adopted some of the DPU's recommended changes B most notably, different rates for each of the UBET exchanges – but opposed the DPU's recommendation of a further survey.

6. The Committee was in the process of completing its investigative memorandum and recommendations to the Commission at the time the Commission's Order was issued.

DISCUSSION

7. The Committee's primary objective in filing this Petition is to fulfill its statutory duty to represent the interests of “residential customers and those engaged in small commercial enterprises”.¹

8. It is the Committee's view that the Order fails to fulfill the regulatory responsibility the Commission has to residential and small business customers within the Uintah Basin to ensure that (1) the EAS rates it is proposed they should pay are just and reasonable; (2) they are fully informed about those rates; and (3) they have an appropriate opportunity to choose whether they wish to accept EAS at those rates.

9. The Committee completely supports the creation of an EAS for the Uintah Basin, and does not seek to unnecessarily complicate or postpone its creation. The Committee's Petition is prompted instead by the fact that the Commission issued its Order before the Committee had sufficient opportunity to provide its data, analysis and recommendations, or received any notice of the Commission's intent to issue an order.

¹ Duties and responsibilities of the Committee – see UCA 54-10-4(1).

10. Inasmuch as the Commission issued its Order without having scheduled a due date for comment, the Committee respectfully petitions the Commission to review and reconsider its Order in the light of the additional information provided herein.

11. The Committee acknowledges the urgent desire of many to expeditiously move ahead with implementation of a Uintah Basin EAS. However, the speed of a regulatory review is necessarily governed by the petitioners making available complete, accurate and acceptable data and analysis supporting their application. It was not until March of 2003 that the DPU felt it had sufficient data to proceed. As this Petition will make clear, there was still not adequate traffic and cost data and analysis before the Commission at the time it considered this Application and issued its Order.

ARGUMENT

12. The additional information provided by the Committee in this Petition shows that the findings and determinations in the Order do not fulfill the Commission's responsibilities to regulated telephone customers in the Uintah Basin. Some of the Committee's data and analysis are included as Attachments to, and by this reference incorporated into, this Petition. Other data and analysis, and the Committee's recommendations, are set forth in the Petition itself.

Overall Benefit of the Committee's Further Data, Analysis and Recommendations

13. The overall effect of the Committee's data, analysis and recommendations is a likely lowering of the monthly charges each and every UBTA and UBET customer will need to pay for EAS (even lower than the monthly charges UBTA customers currently pay). The broadening and

strengthening of support for EAS likely to result from such lower charges should more than offset any frustration caused by the further short delay necessary to properly implement EAS.

EAS Costs and Revenue Requirement.

14. Although no party has previously stated it in the record of this case, all the cost calculations and rate proposals thus far presented to the Commission assume that EAS will result in 8 times the traffic carried on the present toll routes. This so-called stimulation factor is supposedly based upon prior custom and practice in Utah², but no party has offered any data or analysis to support it. The Committee tried – and failed – to find any empirical evidence for it, and so respectfully suggests that the Commission should regard it as no more than an arbitrary guess. The Committee researched precedents in states across Qwest’s service territory and found nothing to reliably support a stimulation factor greater than 3 in the case of rural telephone exchanges.³

² To just what extent a stimulation factor of 8 has actually been custom and practice in Utah is questionable. In a 1998 memorandum to the Commission regarding a proposed Lehi to Salt Lake Metro EAS, for example, the Division proposed a stimulation factor of 7.5.

³In a 1994 case, the Minnesota Public Utilities Commission reported that it had:

recently adopted a stimulation factor of 3 in ten outstate EAS petitions [and that] in the absence of [empirical] evidence, [it had] made a downward adjustment to 3 from the original outstate stimulation factor of 5.

It went on to:

“adopt a stimulation factor of 3 for this EAS proceeding.” In a 1989 case involving non-metropolitan Denver areas, the Public Utilities Commission of Colorado referenced testimony recommending a stimulation factor of 5. The witness had based his recommendation on eleven stimulation factors – covering a large range of values, averaging 8.87 – that had been estimated in EAS cases in US West states. The

15. It is important that EAS costs are not underestimated, or the required revenue under-collected. In the case of UBTA, that might lead to increased State Universal Service Fund fees for all telephone customers in Utah. However, it is equally important to the affected residential and small commercial customers that the costs are not overestimated or the revenue requirement over-collected. That might well result in an unnecessary, unfair and unwarranted windfall profit to UBET, and thus to UBTA.⁴ Review of all the information available thus far indicates that a stimulation factor of 8 would impose considerably higher EAS rates on Uintah Basin customers than are necessary to cover the costs. They would lead to over-collection and do not appear to be justified.

16. The Committee petitions the Commission to revise its Order to require the Petitioners to base their cost calculations on a stimulation factor of 3.

17. The Committee has not recommended a lower stimulation factor primarily because it is concerned to avoid any under-collection. It expects that using a factor of 3 will still lead to some over-collection, although not nearly so much as would be the case with a factor of 8. So that customers are relieved as speedily as possible of the unreasonable burden of paying excessive rates, post-

Commission noted that only two actual stimulation factors [were] included in the table. They were 0.8 and 2.35", and both were significantly lower than the witness recommended. It also noted the receipt of actual stimulation data of 1.29 for the recent EAS in Otero County.

⁴ In their April 23 Response, the Petitioners admitted that "UBET is a wholly-owned subsidiary of UBTA. Ultimately the profits generated by the operations of UBET wind up in UBTA." UBTA is a cooperative whose customers are also its beneficial owners. The use, retention or distribution as dividends of UBET profits is therefore at the discretion of UBTA's management, Board and customers.

implementation traffic and costs should be reviewed as soon after implementation as can reasonably be managed.

18. The Committee proposes a prompt three-month study by the Petitioners to verify actual post-implementation traffic and costs. After such a study, there should be an equally prompt true-up of EAS rates. The Committee respectfully petitions the Commission to revise its Order accordingly.

19. The Petitioners have expressed a concern that traffic might continue to increase for up to a year after the implementation of EAS. The Committee would not oppose a further traffic and cost study, and true-up of rates, after some reasonable extended period of implementation, should the Petitioners request it.

Cost of Service, Rate Spread and Rate Design

20. Because the projected costs for implementing EAS in the Uintah Basin have never been anything more than arbitrary estimates, the proposed monthly rates have never been anything more than arbitrary and unsupported either. In fact, the arbitrariness of the proposed rates is three-fold. Not only are they based on arbitrarily estimated costs, but the required revenues have been arbitrarily assigned to the various UBTA and UBET local exchanges, and their assignment between the residential and business classes arbitrarily abandoned.

Rate Spread Among Local Exchanges

21. In their May 28, 2002, Application, the Petitioners proposed that the charges currently paid by the customers of the Cooperative for toll-free calls between the UBTA exchanges – \$4.95 per

month for residential and \$6.95 for business lines – should apply to UBET customers as well, and that all the customers of both companies should have toll-free access to one another⁵.

22. On its face, this looked like a good deal for the customers of UBTA, who would each be able to make toll-free calls to five times as many lines as they presently can. It looked like an excellent deal for UBET's Duchesne customers, who would be able to call twenty-one times the lines for the same rates UBTA customers have been paying. The prospect was a little less rosy for Roosevelt customers, who would gain access to just a little more than four times as many lines, while seeing \$4.95 or \$6.95 rate increases. And, by comparison, it looked rather unattractive for Vernal customers, who would be able to call only 80% more lines toll-free for the same rate hike.

23. Some customers in Vernal and Roosevelt told the Commission, Division and Committee they thought the proposed rates were too high for the number of calls they would make to numbers in UBTA and other UBET exchanges. In their April 23 Response, the Petitioners record their belief that while "those voicing opposition represent a small, distinct minority of the residential subscribers in the Vernal exchange, their small voice resulted in a sizeable, disproportionate impact on the process of creating the EAS", and that "(a)s a result of the above-described opposition, the DPU raised numerous

⁵Attachment 1 to this Petition summarizes the time line of development of traffic and cost data, and rate proposals. It is the Committee's view that there was insufficient traffic and cost data for a proper review and analysis of the Petitioners' Application before the Commission at the time it considered and issued its Order, and that all the necessary information has still not been made available.

questions and objections to the rates proposed by the Companies”. The Committee respectfully dissents, and asserts that customer opposition has had no impact whatsoever on the progress of this case, on the requests of the Division for traffic and cost data, or the insistence of the Committee that rates be cost based, fair and reasonable.

24. The Petitioners presented no traffic or cost data to support their proposed rates. On Page 6 of their Response, they referred to: “opposition by the DPU and the Committee ... to the Companies’ proposed uniform EAS rate structure for all of the subject exchanges”. How could the Division or Committee do other than make clear to the Company that it needed to do more than make an arbitrary guess at the appropriate rates? This was not “opposition,” it was the competent, professional exercise of the statutory roles of the two agencies to: “protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost”⁶, “assess the impact of utility rate changes ... on ... consumers”, and to “advocate ... positions most advantageous to a majority of (them).”⁷

25. Although the Petitioners made a study available to the Division (but not the Committee) in November, 2002, it was March 21, 2003, before the Division (still not the Committee) received a revised study that satisfied it enough to prepare the first analysis it would share with the Committee. At

⁶ Objectives of the Division – see UCA 54-4a-6(4)(c).

⁷ Duties and responsibilities of the Committee – see UCA 54-10-4(1) and (3).

this point the Division concluded that cost based rates would average \$14.87 for UBTA and \$1.80 for UBET lines. On March 26, the Petitioners adopted revised rates – with no differential between residential and business lines – of \$4.95 for UBTA, Duchesne and Roosevelt, and \$2.84 for Vernal. It was March 31 before the Committee received, and its staff and expert consultant were able to begin to review, copies of the Petitioners’ traffic and cost data alongside the Division’s March 21 analysis.

26. After the Committee’s consultant, William Dunkel, drew attention to significant inconsistencies in the study, the Petitioners further revised it on April 4, 2003. At this point it appeared that cost based rates would range from \$12.51 for UBTA to 30 cents for Vernal lines. Mr. Dunkel found further problems, and the study was revised again on April 7, reducing cost-based rates to a range from \$9.24 for UBTA to just 24 cents in Vernal. The Division records that, on that same day, the Petitioners adopted the further revised rates first proposed to the Commission in the Division’s April 11 Memorandum: \$5.75 per month for UBTA; \$3.25 for Duchesne; \$2.25 for Roosevelt; and 80 cents for Vernal.

27. Neither the Division’s Memorandum nor the Petitioners’ Response provided any rationale to explain why the rates it recommended were just and reasonable, or why the Commission should adopt them in preference to cost based ones. And neither the Division nor the Petitioners have provided any rationale for abandoning the differential between residential and business rates.

28. To this point, everybody’s calculations incorporated a stimulation factor of 8, but the Committee was beginning to conduct the research summarized in Paragraph 14, and Footnotes 4 and 5, above, and, by April 29, had calculated what cost based rates would look like with a factor of 3. It

appeared that monthly charges of \$3.47 for UBTA lines, 77 cents for Duchesne, 44 cents for Roosevelt, and as little as 9 cents in Vernal would allow the petitioners full recovery.

29. In their April 23 Response, the Petitioners indicated that, while they had adopted the Division's rate revisions, it was not because they agreed with the Division's position. Indeed, on Page 5 they emphasized their "belief that the uniform rates (they) originally proposed ... are more consistent with the public policies favoring universal services at affordable rates. The Committee respectfully dissents from that view. Rates for basic telephone service are set uniformly in order that a remote Utah farmer does not have to sell the farm to acquire telephone service. There is no such public imperative in this case; and the Commission's own current and past EAS rules, as well as Utah statutory law, mandate "cost-based, and otherwise just and reasonable, rates"⁸. On Page 6 of their Response, the

⁸Both the earlier Commission Rule 746-347-5A that expired on April 12, 1998, and the current Rule 746-347-4A, which became effective March 10, 2003, contain the phrase [t]he study shall determine a precise cost-based EAS rate. The earlier rule also contained the following sentence under Section 746-347-1A. Authorization:

Section 54-8b-11 and Subsection 54-8b-3.3, require that the Commission endeavor to make available universal telecommunications service at just and reasonable cost-based rates to each customer without preference to persons, corporations, or localities.

Rule Section 746-347-1A. no longer contains the wording just and reasonable cost-based rates . . . without preference to persons, corporations, or localities However, the omission appears to have more to do with drafting style and organizational structure than any intent to change the rule=s purpose since Section 746-347-4 still speaks of cost-based pricing.

Finally, there are the general statutory provisions referenced in Rule 746-347, such as Utah Code Ann. 54-8b-11 and 54-8b-3.3, as well as the even more general provisions of 54-3-3 and 54-3-8, which except for well-defined exceptions all mandate that the rates telephone utility customers pay must be reasonably and fairly assessed. That would forbid unreasonable subsidies or rate structures based on

Petitioners “acknowledge that it has been the prior practice of the Commission to set EAS rates based on the specific costs of providing EAS in the discrete exchanges.”

30. The Universal Postal Union, in its 1874 charter document, the 1874 Berne (Switzerland) Convention, adopted a generally recognized principle, since applied to other communications media, that the traffic flowing, and the costs of carrying it, between two population clusters tends to be similar not necessarily identical in each direction. That is why postage for international mail is generally only charged and collected in the sending country, why the rates in either direction are usually comparable, and why toll bridge fares are often only collected one-way.

31. Assume two hypothetical telephone exchanges, one with 1,000 and the other with 10,000 lines, and local toll calling between them at 10 cents a minute. Further assume 1000 calls generating \$1,000 in monthly revenue in each direction; and an average of 10 calls per line from the smaller to the larger, and 1 call per line from the larger to the smaller exchange each month. Now assume a stimulation factor of 3, and that EAS costs are estimated at \$2,200 a month in each direction. The cost-based rates would be \$2.20 per line in the smaller, and 22 cents in the larger, exchange, generating the required revenue of \$2,200 in each direction. The Petitioners’ preferred approach would have

anything other than a fair and reasonable cost of service.

⁸ The Vernal Express, April 17, 2003.

⁸ Utah Code § 54-7 statutory provisions of 54-3-3 and 54-3-8, which except for well-defined exceptions all mandate that the rates telephone utility customers pay must be reasonably and fairly assessed. That would forbid unreasonable subsidies or rate structures based on anything other than a fair and reasonable cost of service.

every line in both exchanges paying 40 cents, generating only \$400 in the smaller, but \$4,000 in the larger, exchange. So the customers in the larger exchange would be subsidizing those in the smaller to the tune of \$1,800 each month in perpetuity.

Likely UBTA and UBET Over-Earning

32. Attachment 2 (Attachment 2 is Confidential Information) shows that the rates originally proposed by the Petitioners would have resulted in UBET customers subsidizing UBTA customers by \$173,000 annually, but they would also have generated windfall profits for the Petitioners of \$647,000 each year, almost one-third more than the costs of the entire EAS proposal, assuming a stimulation factor of 8. The rates proposed in the Division's April 11 Memorandum eliminate the windfall profits, but still result in an annual subsidy of \$141,000 from UBET to UBTA customers. The Division offers no rationale for these subsidies, although the Petitioners continue to argue that it serves the interest of unifying the Basin.

33. Using the stimulation factor of 3 requested by the Committee, the Petitioners' originally proposed rates would not result in a subsidy from UBET to UBTA customers, but would deliver annual windfall profits of \$952,000, 98% of which would come from the 82% of customers served by UBET. The rates in the Division's April 11 Memorandum would again avoid a subsidy, but result in windfall profits of \$304,000 each year, 30% contributed by the 18% of customers served by UBTA.

34. On Page 7 of their Memorandum, the Petitioners claimed that: "(c)ontrary to the apparent belief of the DPU, the Companies do not necessarily benefit from the creation of the EAS." Whether or not it was their intent, plainly the only possible consequences of the Petitioners' original rate proposal

would be to have UBET's customers massively subsidize EAS for UBTA's members, and simultaneously provide the Petitioners with a large increase in profits. The rates proposed in the Division's April 11 Memorandum maintain a subsidy of UBTA's members' EAS rates by UBET's customers equivalent to almost 30% of the total cost of EAS for both sets of customers. And, given its research into stimulation factors, the Committee believes that implementation of the rates proposed either originally or on April 11 will result in massive windfall profits to the Petitioners.

Rate Design for Business and Residential Classes

35. It seems self-evident that a business line is likely to receive more calls from other business and residential lines, while a residential line is likely to receive fewer calls from other residential and business lines. Again referring to the principle stated in Paragraph 30, above, the average business line is likely to make more inter-exchange calls than a residential line, so it will cause a greater share of EAS costs than the residential line, and also derive a greater benefit from EAS than the typical residential line. The Petitioners' General Manager and CEO has been reported as saying that Uintah Basin residents are just as likely to shop out of the area while they have to pay for individual local toll calls, but would be more likely to buy from local businesses when EAS becomes available.⁹ So higher rates for business lines are likely to be balanced by economic benefits for Uintah Basin businesses.

36. Unfortunately, the Petitioners have included no customer-class specific data in their traffic and cost study, so the Committee has been unable to calculate separate residential and business rates. However, Attachment 3 shows that Qwest's business customers uniformly pay a higher monthly charge

generally one-third higher than its residential customers in exchanges with EAS in Utah.

Commission Authority to Set Just and Reasonable Rates

37. The Commission notes in its Order that it has limited ratemaking authority with regard to UBTA customers because UBTA is a telephone cooperative. Utah statutory law still makes clear, however, that the Commission must nevertheless determine that a telephone cooperative's proposed rate increase is "just and reasonable."¹⁰

38. To the extent there is a philosophical basis for regulating a cooperative differently than an investor owned utility, it is because the customers of the former are also its owners and elect the members of its board. They are therefore able to exercise some control over the actions of that board. UBTA's Board has seven members, each elected by the customers, regardless of number, of one exchange. Altamont's 800 customers elect one member, as do Randlett's 200.

39. It seems evident to the Committee that the existing UBTA EAS rates contain implicit subsidies from the customers of the larger exchanges, such as Altamont, to those of the smaller ones, such as Randlett, and that they generate revenues considerably in excess of cost. Since the Petitioners have also been under the impression that the Commission has limited ratemaking authority over telephone cooperatives, they have declined to produce any traffic or cost data relating to individual routes between UBTA exchanges. Based on what has happened in the instant case, it seems unlikely that any traffic or cost study was undertaken prior to the implementation of the existing UBTA EAS.

⁹ The Vernal Express, April 17, 2003.

¹⁰Utah Code § 54-7-12(7)(a)(I).

The Committee concludes that no-one, not the cooperative's management, not its Board, and certainly not its members, knew whether some of its customers were subsidizing others, either in EAS rates, or in dividends by way of revenues in excess of costs. The Committee is convinced that the customers of this cooperative equally need the protection of the Commission, too.

40. In their April 23 Response, the Petitioners noted that “the respective Boards of Directors of the Companies approved those specific rates.” The Petitioners have provided no evidence that the UBTA and UBET have separate, differently constituted, boards or managements, or that the impacts of its EAS proposal on the separate UBET and UBTA customer groups were properly and separately considered. The Petitioners have chosen – UBET customers have not elected – one representative each from Duchesne, Roosevelt and Vernal to join the Board in a non-voting capacity. Were these exchanges to join the cooperative, the customers in them would subsequently elect three members of the Board, one each to represent Duchesne's, Roosevelt's, and Vernal's customers.¹¹ The Petitioners' stated objectives, to unify the Uintah Basin and to pave the way to invite UBET's customers into membership in the cooperative, strengthen the Committee's view that UBTA and UBET are not independent entities. For all practical purposes they are one and the same, under common management and control. The Committee respectfully recommends that the Commission attach little, if any, weight to the approval of the Petitioners' Boards. The Boards are not truly representative, in a one person - one vote sense, either of UBTA's member customers, or UBET's customers. The rates in question were not

¹¹ Duchesne has more customers than the largest UBTA exchange, and almost as many as the three smallest (Randlett, Tabiona and Lapoint) combined . Roosevelt has more than all seven UBTA

cost based, and it is the responsibility of the Commission, not the utilities', to ensure that the rates it approves are just and reasonable.

41. UBET is an investor owned utility, not a telephone cooperative, and there is no dispute that the rates UBET customers pay for EAS or other telephone service are subject to the Commission's jurisdiction. The information already provided in these proceedings – as well as the further data, information, analysis and recommendations of the Committee – indicate that the rates which the Division and the Petitioners' have most recently proposed that Uintah Basin customers should pay are still far from cost-based, or otherwise fair and reasonable. They constitute an unwarranted subsidization of UBTA customer rates, or will result in significant windfall profits to the Petitioners at the expense of both UBTA's and UBET's customers.

42. The Committee specifically petitions the Commission to reconsider and revise its Order to ensure that the EAS rates for all Uintah Basin customers are cost-based, and otherwise fair and reasonable.

43. The Committee further petitions the Commission to ensure that rates are cost-based, fair and reasonable; to require that the Petitioners provide to the Commission, the Division and the Committee at least three consecutive months of actual pre-EAS-implementation traffic and cost data between every pair of the affected local exchanges, UBTA's as well as UBET's; and to show the difference in usage between business and residential customers. It is the Committee's understanding that all of this data is available, stored electronically, and that mining and presenting it in the form of a

exchanges combined, and Vernal more than three times as many.

further study would be neither prohibitively onerous nor costly, especially when compared with the magnitude of the subsidies and excess profits that might otherwise result.

44. The Committee was concerned to read that the Petitioners' General Manager and CEO had said: "(t)his is our final offer. If these rates (apparently referring to those recommended by the Division on 11 April and approved by the Commission in its 13 May Order) are not approved, we won't provide the service."¹²

45. The Petitioners have represented to the Commission that they found a high level of support for the idea of Basin-wide EAS in their 2000 survey and 2002 public meetings. The Commission has received letters of support from members of the Utah Legislature representing Uintah Basin districts, from county commissions, city mayors, and chambers of commerce. Such support has regularly been accepted by the Commission as sufficiently indicative of customer demand for EAS, and of the existence of a legitimate community of interest, for it to require a telephone company – over its objections – to proceed with a traffic and cost study, and survey.

46. The Committee respectfully petitions the Commission to revise its Order to make clear to the Petitioners that they will not be permitted to withdraw now, but will be required to provide the data, complete the studies, and implement Basin-wide EAS at the rates the Commission finally orders.

Public Interest Survey

47. The Commission has generally taken the view that EAS differs from most other rate-making proceedings. There is more than a single way for a telephone company to recover its costs for

providing inter-exchange calling. It has also taken the view that, since the company can be made whole either way, customers should be offered the choice between local toll and EAS charges. Customers can usually make several minutes worth (anything from 3 to 40¹³) of local toll calls for the price of one month's EAS. Depending upon the individual customer's circumstances and priorities at any instant, they can choose whether to incur a local toll charge by placing a call, and how large the charge will be by the length of time they remain connected. But, once EAS has been approved by the Commission and implemented, customers no longer have any choice. All of them, forever more, must pay the flat rate for the service, regardless of their individual preferences, however those may change over time. So the Committee suggests that it is appropriate that they should be fully informed about the options available to them and their possible consequences, that the process by which they exercise their choice should be most carefully arranged to avoid any subsequent recriminations, and that, to minimize the possibility that the minority may be victimized, a very large super-majority should be required to approve EAS.

48. The Committee does not contest the Petitioner's assertions that there is considerable support for Basin-wide EAS. However, the critical question to be addressed is whether it has yet been demonstrated that a sufficient number of affected customers, having been fully informed, have properly chosen to impose EAS rates upon themselves and their neighbors, present and future.

¹² The Vernal Express, April 17, 2003.

¹³ From residential rates in Attachment 3, assuming a local toll rate of 10 cents a minute.

49. The Petitioners, in their April 23 Response, objected to “disclosure and emphasis of costs and cross subsidies” as setting a “dangerous precedent.” The Commission has previously heard the Committee’s view that the regulation of the rates and services of monopoly public utilities by the Division of Public Utilities and the Public Service Commission is the public’s business, and should be conducted in public. The Petitioners’ argument about disclosure of averaging rates for basic telephone apply when customers themselves are being invited to make a choice tolls and EAS service simply doesn’t. The Committee agrees that “(the) issue isn’t whether there is cross subsidy involved;” but the issue cannot be “whether the subscribers within a discrete exchange are willing to pay the proposed amount for EAS service” when neither the Petitioners nor the customers have any idea what a fair price is. The issue is whether rates are just and reasonable. There is no free market here to set prices – that is what the Commission is for, and it is supposed to do so on the basis of costs. As the Petitioners admit: “it has been the prior practice of the Commission to set EAS rates based on the specific costs of providing EAS in the discrete exchanges.” Although the Petitioners claim to be more concerned “about providing the EAS services at affordable rates to all of their respective customers and ... unifying the ... Basin than (generating) profits”, their original rate proposal belies the assertion.

50. The public interest survey conducted by the Petitioners and referenced in their Application is now over thirty months old. At that time, not only had the petitioners gathered no traffic or cost data, they had not yet decided what rates they wanted to charge for EAS, so the price range (“up to \$5.00”) they asked customers to consider was based upon nothing more than an arbitrary guess. When they held their public meetings on May 14 and 15, 2002, they had presumably decided upon the \$4.95

residential and \$6.95 business rates they subsequently (in their May 28 Request) asked the Commission to approve. But, the Petitioners still had no accurate information regarding projected costs, revenue requirement, rate spread or rate design. Those proposed rates were therefore based upon nothing more than an arbitrary guess as well. Moreover, the rates approved in the Commission's May 13 Order are yet again different than those the Petitioners originally proposed, and customers were never consulted about them.

51. The customers who participated in the survey and public meetings didn't have the information they needed to make the decision that faced them, a decision which could potentially cost them more than \$1 million a year, or \$50 dollars a line per year, in perpetuity. The Committee strongly concurs with the Division's April 11 Memorandum that the original survey was deficient in several respects and cannot be considered substantial evidence that the affected customers had made an informed decision to accept the Petitioners' EAS proposal and rates.

52. The Committee believes a new survey is necessary in order to ensure that the Petitioners' customers UBTA as well as UBET have an appropriate opportunity to choose for themselves whether they prefer to accept or reject the EAS proposal. It also believes that it is important that all customers are clearly and completely informed about the nature of the proposal prior to the survey being conducted.

53. In their April 23 Response, the Petitioners note that "there were no EAS rules in effect" when they conducted their survey in November, 2000, so "the strict requirements of the current EAS rules should not apply." One purpose of rules is to codify or flesh out important principles or laws, and

the principles or laws don't go away just because a rule has lapsed or has not yet come into effect. The Commission has the duty to ensure that rates are just and reasonable whether a particular rule has lapsed or not.

54. The Petitioners "assert that to require them to expend another \$20,000 in order to conduct an additional survey is an unwarranted and unnecessary expense to be borne by the subscribers of the Company." The Committee sees this \$20,000 expense in contrast with the nearly \$200,000 subsidy the Petitioners originally proposed UBET customers should give UBTA customers, along with a nearly \$650,000 windfall profit for the companies, and presumably the UBTA customers who are their beneficial owners.

55. The Committee respectfully petitions the Commission to order the Petitioners to prepare a bill insert that fully and plainly describes the Uintah Basin EAS proposal, including the sequence of events to the point at which it is distributed, the traffic and cost data and the derivation of the revenue requirement, the rate spread and rate design, and the survey, implementation, post-implementation study and rate true up processes. To the extent that any possibility of subsidies or windfall profits remains in the proposal, the insert should fully disclose those facts and the relevant details between local. Further, the Committee requests that the Commission order the Petitioners to secure the agreement of the Division and Committee to the draft insert, and obtain the Commission's approval for it before it is distributed.

56. The Committee petitions the Commission to order that the inserts be distributed to all Uintah Basin UBTA and UBET telephone customers in their mailed monthly statements not less than one month, but not more than two months, before the survey begins to be conducted.

57. Also, the Committee petitions the Commission to order that the Petitioners prepare and conduct a survey of a statistically valid sample of customers in all of their Uintah Basin UBTA and UBET exchanges and at their own expense to determine what proportion of customers in each of those exchanges wants to pay the cost based rates for EAS. And finally, the Committee petitions the Commission to require that at least 75% of the statistically valid sample of customers surveyed in any exchange shall vote in favor of EAS at the cost based rates before the Commission shall order those rates into effect in that exchange.

58. If rates are truly cost based, the Committee can see no reason why, if at least 75% of the customers in one exchange want EAS, they should not have it. At the same time, it can see no reason why, if more than 25% of the customers in another exchange reject EAS, they should be compelled to have it. The Committee petitions the Commission to order accordingly.

59. The Committee understands that full disclosure and a new survey may create some further resistance than was found to be present in the original survey if cross-subsidization or windfall profits are still going to exist. However, the lower overall EAS rates resulting from the application of a more realistic stimulation factor should more than offset any such resistance.

SUMMARY

The Committee, therefore, petitions the Commission to review and reconsider its May 13, 2002, Order in this Docket as follows:

1. The Committee petitions the Commission to revise its Order to provide that the initial EAS rates be set utilizing a stimulation factor of 3.
2. The Committee further petitions the Commission to revise its Order to provide that the Petitioners will promptly undertake a continuous three-month post-implementation traffic and cost study of EAS usage between the local exchanges, including among the residential and business classes between the local exchanges; and that the results of such continuous three-month study be provided to the Commission, the Division and the Committee by the Petitioners within five months after initial implementation of EAS service.
3. The Committee further petitions the Commission to revise its Order to provide that customer rates will be trued up, within 6 months after initial implementation of EAS service, to the most just and reasonable rates reasonably possible, based upon a true up of EAS cost disclosed by the post-implementation EAS traffic and cost study to be undertaken by the Petitioners; and that such true up of EAS cost and further true up of customer monthly EAS rates will be made by Commission order based upon the Petitioners', DPU's, and the Committee's recommendations.

4. The Committee further petitions the Commission to revise its Order to provide that rates for EAS in the Uintah Basin be clearly cost-based, or that the Petitioners and the Division otherwise very clearly and specifically justify any departures from cost-based pricing; and
5. The Committee further petitions the Commission to revise its Order to provide that, prior to implementation of the EAS, the Petitioners shall provide to the Commission, the DPU and the Committee a three-month cost and traffic study showing the differentiation in usage by residential and business customers among the various UBTA and UBET local exchanges in order to set initial implementation residential and business monthly EAS rates as reasonably as possible.
6. The Committee further petitions the Commission to revise its Order to provide that Petitioners may not withdraw their Application for EAS for the Uintah Basin, but to provide the data, complete studies, and implement Uintah Basin-wide EAS at the rates the Commission finally orders.
7. The Committee finally petitions the Commission to revise its Order to provide for a new survey prior to implementation of EAS in order to more accurately and reliably determine the support among the local exchanges in the Uintah Basin for EAS. The Committee further petitions the Commission to revise its Order to require that the new survey disclose more accurately projected EAS cost data, and a more just and reasonable, and cost-based, apportionment of the EAS cost among the various local

exchanges and among the residential and business classes in each local exchange. The Committee recommends, as stated above, that all UBTA and UBET customers receive in their monthly billing, not less than one month, and not more than two months, before the survey an insert informing them of the new survey and the informational contents of the new survey in order to better ensure an informed participating survey group.

The Committee respectfully requests the Commission's review and reconsideration as stated above, and the revisions to the Commission Order as provided above, in order that EAS for all Uintah Basin telephone customers can be justly and reasonably implemented.

Respectfully submitted this 1st day of June, 2003.

Reed T. Warnick
Counsel for the Committee of Consumer Services

CERTIFICATE OF SERVICE

I hereby certify that copies of the PETITION FOR AGENCY REVIEW AND
RECONSIDERATION in Docket Number 02-053-02 were mailed or hand delivered on the _____
day of June, 2003 to the following:

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